IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1428 of 2007

Nithya .. Petitioner

Vs

1. The Secretary to Govt.,
   Prohibition and Excise Dept.,
   Secretariat, Chennai.

2. District Revenue Officer and
   In-charge District Collector
   and District Magistrate,
   Thiruvarur District, Thiruvarur. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.Parthiban

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, wife of the detenu, by name Elangovan, who was incarcerated at Central Prison, Tiruchirappalli, by an order dated 25.5.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, has filed this petition seeking writ of Habeas Corpus to call for the records in connection with the order of detention passed C.O.C.No.10/2007, to set aside the same and to direct the respondents to produce the detenu before this Court and set at liberty.

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2. On the basis of the complaint lodged by one Rajkumar that on the evening of 13.5.2007, when he was proceeding to the railway station to receive his aunt's daughter, the detenu and two others waylaid him, brandished a knife and demanded the valuables he had and that when he refused, they forcibly took away the mobile phone and a cash of Rs.195/- from him. In the melee, the complainant got injured and when he raised alarm, the taxi drivers tried to apprehend the accused, but they brandished the knife and threatened them. However, the traffic head constables apprehended them and handed over to the Inspector of Police, Thiruvarur Town police station, who arrested the accused and registered a case in Crime No.180 of 2007 under Sections 392, 397 and 506(ii) IPC and later, they were produced before Judicial Magistrate, Thiruvarur, for judicial remand.

3. The second respondent, taking note of the above ground case and finding three adverse cases on the file of same police station, in Crime Nos.145/04 for offences under Sections 41(2) Cr.P.C. @ 399 IPC, 556/2004 for offences under Sections 120(b), 148, 324, 302 r/w 149 IPC and 371/2006 for the offence under Section 399 IPC., having satisfied that there is compelling necessity to detain the detenu in order to prevent him from indulging in such activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. Since the learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay in considering the representation of the detenu, we do not propose to go into other aspects, as the said ground has to succeed.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

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5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6.Coming to the case on hand, admittedly, objecting to the order of detention dated 25.5.2007, a representation was made on behalf of the detenu, which was received by the Government on 25.6.2007. Remarks were called for from the detaining authority on 26.6.2007, who, in turn, called for parawar remarks from the sponsoring authority and the same were received on 6.7.2007. Thereafter, the file was circulated on 9.7.2007, on which date, the Under Secretary and the Additional Secretary considered it. The Minister concerned dealt with the file on 10.7.2007 and rejected the same. However, the rejection letter was prepared only on 16.7.2007 with a delay of six days, which is not properly explained. Even if we exclude the intervening holidays, viz. 14.7.2007 and 15.7.2007 (being Saturday and Sunday), there is delay of four days in preparing the rejection order, which is admittedly unexplained and inexcusable. Thereafter, the rejection letter was sent on 18.7.2007 and served on the detenu on 21.7.2007.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

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"In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, there is delay of four days in preparing the rejection letter, as referred to above, which, in our considered opinion, rendered the detention illegal and hence, we are inclined to allow this petition.

In the result, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Secretary to Government
of Tamil Nadu, Prohibition and
Excise Department, Fort St. George,
Chennai 600 009.

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2. The District Revenue Officer and
   In-charge District Collector
    and District Magistrate,
   Thiruvarur District, Thiruvarur.

3. The Superintendent
   Central Prison, Tiruchirappalli.
   (In duplicate for Communication to Detenu)

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law & Order)
   Fort St. George, Madras-9.

+1 cc to Mr.S.Nageshwaran, Advocate Sr.No.72697.

TS(CO)
DCP/7.1 H.C.P.No.1428 of 2007

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